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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-058

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The following comments pertain to the introductory clause and the analysis of the rule:

- (1) In the capitalized heading preceding the introductory clause, "REPEALING" should be deleted, since no provisions are repealed in this rule.
- (2) Section 1.02 (1), Manual, states that the introductory clause of a rule-making order should consist of a relating clause concisely stating the subject matter of the proposed order and an enumeration of the sections treated by the proposed order and the nature of the treatment. In this rule, the format of the enumeration of sections treated is incorrect and the provision lacks a relating clause. The introductory clause should be rewritten to read as follows:

The division of hearings and appeals proposes an order to amend HA 1.05, 1.08 (3) (a) and (b), 2.05 (8) (a) and 2.07; and to create HA 1.18 (5), relating to hearing procedures and stenographic records.

- (3) With regard to the analysis, s. 1.02 (2), Manual, states that the order must contain a plain language analysis of the rule, the purpose of which is to provide an understandable and objective description of the effect of the rule.

The analysis should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules. In this rule, the portion of the analysis dealing with the amendments to ch. HA 1 merely states that those amendments “incorporate procedures for hearings...” but does not explain the specific changes made in the various provisions being amended. For example, there is no explanation for the insertion of the references to “complaints” in ss. HA 1.05 and 1.08 (3) (a). Also, the portion of the analysis relating to ch. HA 2 should indicate that this chapter pertains to corrections hearings. The abbreviation “ch.” should be inserted before the “HA 1” on line 1 and the “HA 2” on line 5. Also, the statutory citation on line 2 should be rewritten to read: “s. 227.43 (1) (bg) and (br), Stats.,”.

b. In the treatment clause to every SECTION of the rule, the phrase “as follows” should be deleted.

c. The material in SECTIONS 2 and 3 of the rule could be combined into a SECTION 2, with the following treatment clause: “HA 1.08 (3) (a) and (b) are amended to read:”. Section 1.04 (2) (a) 4., Manual, provides that when two or more subsections, paragraphs, subdivisions or subparagraphs of the same rule section are affected by the same treatment, they may be included in the same SECTION.

d. In s. HA 1.08 (3) (b), it appears that the “or” which is stricken through on line 2 should be retained to make the phrase readable. If that is the case, the “or” should appear without being stricken through and the underscored comma which immediately precedes it should be deleted.

e. In SECTION 4, the citation in the treatment clause should begin: “HA 2.05 (8) (a)....” Also, the title “APPEAL” should be deleted. [See s. 1.05 (3) (d), Manual.]

f. To preserve the ascending numerical order of decimal-numbered rule provisions, the material currently in SECTION 6 of the rule should be moved up to precede SECTION 4 and should be renumbered to SECTION 3. [See s. 1.04 (1), Manual.] Also, the material currently in SECTION 6 creates a sub. (5) of s. HA 1.18. That section generally deals with decisions made by an administrative law judge. It would appear more logical to insert language relating to proposed decisions earlier in s. HA 1.18, since sub. (4), which this provision would follow, relates to activities after a decision is issued. Although it is difficult to ascertain whether subs. (2) and (3) could pertain to proposed decisions as well as final decisions, it appears that the most logical place to insert this language is in a sub. (1m), immediately following sub. (1), which does mention proposed as well as final decisions. It may also be helpful to clarify whether subs. (2) and (3) pertain to proposed decisions as well as final decisions.